



BIC Testimony Before Members of the Joint Committee on Judiciary in Support of Bill No. 431

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Introduction

Good morning, my name is Ryan Sullivan and I am Corporate Counsel for BIC Corporation.

Members of the Judiciary Committee, thank you for raising Bill No. 431, which will clarify Connecticut General Statute 22a-6dd. We appreciate the opportunity to explain why passing this bill is in the best interest of all Connecticut citizens.

BIC is leading the effort to pass the bill, with the support of many business and labor organizations, some of whom are here to testify as well.

This bill is not an effort to direct a result in the dispute BIC has with the Department of Energy and Environmental Protection. It is simply an effort to clarify that all citizens who enter into an agreement with the agency can rely that their agreements are binding, and that either side can go to court if the agreement is breached.

Background

In 1999, an enormous release or series of releases of the chemical trichloroethylene (TCE) was discovered on a hill above of the BIC location in Milford. There is no dispute: BIC was not a cause of that release.

Four years after discovering that release, DEEP issued orders to the owners of the property where the TCE was found and to several other companies in the area, including BIC. BIC was confident it was not a cause of TCE contamination but was willing to enter into an agreement with DEEP to investigate its property.

BIC's exhaustive investigation found low levels of TCE on its property, and concluded that it was caused by the known offsite release. When BIC and the agency disagreed if further work was required by the agreement, the agency filed suit. BIC counterclaimed asserting its compliance with the agreement. When this dispute was ready for trial, the agency unilaterally revoked the consent order, withdrew its lawsuit and moved to dismiss BIC's counterclaim of compliance.



The court determined that although consent orders are in the nature of agreements to resolve disputes, absent legislative correction, the agency is technically authorized to unilaterally revoke consent orders.

The Bill

The bill before you today is about protecting due process. It clarifies that when DEEP enters into agreements known as consent orders with citizens, those agreements must be binding – on both parties. And the courts must be allowed to resolve any disputes or breaches concerning consent orders.

DEEP rules expressly encourage using consent orders to resolve disputes with the agency, and they have been used innumerable times. It is a common belief in the business community that consent orders with DEEP are binding. However, the recent court decision means that consent orders with DEEP are not binding. Further, they may be unilaterally revoked at any time. This renders consent orders useless as a tool to resolve disputes with the agency, resulting in an unnecessary waste of time and money for all parties.

In conclusion, Bill No. 431 provides the necessary clarification to Section 22a-6dd. With this correction, it will now be clear that consent orders are binding on both parties, and when breached, may be remedied in court. This clarification benefits all parties to consent orders with the agency to date and those who may do so in the future. In this way, all citizens can confidently trust that the agreements they enter into with the DEEP are binding and that their right to due process will be protected.

Thank you.

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